

## **REMARKS**

### **Status of the Claims**

Upon entry of the amendment above, claims 1-40 will be pending, claims 1, 19, and 30 being independent.

Claims 10-12 are non-elected, all remaining claims encompassing the elected invention.

### **Summary of the Office Action**

Claim 5 is are rejected under 35 USC §112, second paragraph, as being indefinite.

Claims 14 and 15 are objected to for a lack of antecedent basis for "said front portion."

Claims 1, 3-6, 8, 9, 14, and 16 are rejected under 35 USC §102(e) as being anticipated by DACHGRUBER et al. (U.S. Patent No. 6,360,454, hereinafter "DACHGRUBER").

Claim 2 is rejected under 35 USC §103(a) as being unpatentable over DACHGRUBER in view of OTTIERI (U.S. Patent No. 4,669,202), or in view of DODGE et al. (U.S. Patent No. 4,841,650).

Claim 7 is rejected under 35 USC §103(a) as being unpatentable over DACHGRUBER.

Claims 13 and 15 are rejected under 35 USC §103(a) as being unpatentable over DACHGRUBER in view of GRAY et al. (U.S. Patent No. 3,841,004, hereinafter "GRAY"), or in view of MacQUAID et al. (U.S. Patent No. 3,175,292, hereinafter "MacQUAID"), or in view of FILICE (U.S. Patent Application Publication No. 2001/0042324).

### **Affirmation of Election**

Applicant affirms the election of "Invention I," which the Examiner indicated encompasses the scope of claims 1-9 and 13-16. Each of claims 10, 11, 12 were identified by the Examiner as being directed to patently distinct and non-elected inventions.

### **Request for Acknowledgement of Priority**

Applicant kindly requests that his claim of priority to French Application No. 00.14668, which application was filed on November 9, 2000, be acknowledged.

In addition, Applicant requests acknowledgement of his filing of a certified copy of the priority application, which filing was made on December 9, 2001.

**Acknowledgement of Consideration of Patent Abstract of Japanese Document**

Applicant also kindly requests that the Examiner indicates consideration of the following document that was listed lowermost on the PTO-1449 form that was filed with Applicant's information disclosure statement on February 5, 2002: "Patent Abstracts of Japan," Vol. 1996, No. 09, published September 30, 1996, an abstract of Japanese Publication No. 08-134705 (HISATOMI:KK), published May 28, 1996."

In the copy of the aforementioned PTO-1449 form attached to the Office action, all of the documents, with the exception of the aforementioned abstract, that were cited in Applicant's information disclosure statement were acknowledged as having been considered by the Examiner by way of the Examiner's initials.

**Response to the Office Action****A. Withdrawal of Rejection Under 35 USC §112, Second Paragraph, and Objection**

In response to the rejection of claim 5 for indefiniteness under 35 USC §112, second paragraph, Applicant has introduced an amendment which is believed to resolve the issue raised in the rejection.

Specifically, the bending zone is now specified in claim 5 as being thicker than the supports, as is described in paragraph 0039 of the specification. Of course, in the embodiment shown in Fig. 3, for example (also mentioned in paragraph 0039), the bending zone (2) also is narrower than the widths of the supports (100, 101), which is now specified in new claim 17.

In response to the objection to claims 14 and 15, Applicant has amended claim 14 to provide proper antecedent basis for the expression "front portion".

In view of the amendments, reconsideration and withdrawal of the rejection and objection are requested.

**B. Withdrawal of Rejection Under 35 USC §102(e), Based Upon DACHGRUBER**

Applicant respectfully requests that the rejection under 35 USC §102(e) be reconsidered and withdrawn, at least for the following reasons.

The rejection includes the comment that DACHGRUBER "shows the claimed feature of claim 1 including a rigid frame ..., one bending zone with an abutment."

The portion of DACHGRUBER's description or drawing, which is intended to correspond to Applicant's claimed abutment is not explicitly identified in the rejection.

However, in the patent copy enclosed with the Office action, a part of the passage in column 4, lines 3-8 is underlined. In this passage, an abutment of sorts is described. Specifically, with reference to Figs. 2 and 3 of DACHGRUBER, this passage describes an "open area 42" that is provided as a path for the tongue stiffener 24 so that it can slide within the recess 40 upon flexing of the boot. Presumably, upon flexing of the upper by an amount up to an angle of 45°, the end of the stiffener 24 abuts the end of the recess 40.

But with the stiffener 24 abutting the end of the recess 40 of DACHGRUBER, there is no explicit description of even *that* abutment limiting further flexion of the stiffener.

Thus, the "abutment" disclosed in this passage is that between the end of the stiffener and the end of the recess. That is, there is no abutment *in a bending zone*, as specified in Applicant's claim 1, nor is there an abutment in a bending zone, whereby the bending zone is on opposite sides of supports (such as supports 100, 101 of Applicant's illustrated embodiments), as specified in Applicant's claim 5. Accordingly, reconsideration and withdrawal of the rejection is requested.

If, on the other hand, the rejection is based upon the apertures 100 of DACHGRUBER's tongue stiffener being alleged to correspond to Applicant's claimed abutment(s), again Applicant respectfully traverses same.

In column 7, line 66, to column 8, line 2, DACHGRUBER explains that the apertures 100 are provided to be "shaped and dimensioned in accordance with the desired flexibility or rigidity."

That is, the apertures 100 provide the stiffener with a particular quality of flexion. They are not disclosed as *abutments* nor as any kind of structure that can be fairly regarded as *limiting* or *preventing* flexion of the stiffener.

In addition, different stiffness adjusters 102 can be inserted into the apertures 100 for providing the stiffener 24 with different stiffnesses.

However, the flexion abutment/limit structure is provided by DACHGRUBER with the aforementioned abutment between the end of the stiffener 24 and the end of the recess 40.

Applicant notes that Fig. 3 of DACHGRUBER shows a longitudinal cross section of the tongue and stiffener, with an aperture 100 being shown as extending entirely through the stiffener 24. However, it does not appear that the aperture 100 would provide abutting surfaces, nor would it be clear that even if a stiffness adjuster 102 were to be fitted into the aperture 100 that the combination of aperture + adjuster would provide an *abutment* for the stiffener. DACHGRUBER is silent on this and, further, as mentioned above, DACHGRUBER provides additional and different structure to provide for a limit of flexion of his stiffener.

At least for the reasons above, reconsideration and withdrawal of the rejection is requested.

The rejection of Applicant's claim 6 refers to "shock absorbing element 50" of DACHGRUBER. Applicant respectfully submits that element 50 of DACHGRUBER is not a shock-absorbing element. Instead, it is a "hook" for attaching the stiffener 24 to the tongue 22. See column 3, lines 19-22.

Lastly, Applicant notes that claims 4-6 depend from claim 2 and that claim 2 is rejected only on the basis of alleged obviousness based upon a combination of DACHGRUBER and OTTIERI or DODGE. Therefore, Applicant submits that the rejection of claims 4-6 on the ground of anticipation would appear to have been inadvertent.

**C. Withdrawal of Rejection Under 35 USC §103(a), Based Upon DACHGRUBER, OTTIERI or DODGE**

Applicant respectfully requests that the rejection of claim 2 under 35 USC §103(a) based upon DACHGRUBER and OTTIERI or DODGE be reconsidered and withdrawn, at least for the following reasons.

In claim 2, Applicant specifies that the abutment in the bending zone of the rigid frame of claim 1 includes at least one beveled notch.

OTTIERI fails to teach or suggest any structure that one skilled in the art would be instructed to use in modifying DACHGRUBER in a way that would have resulted in Applicant's invention.

In column 7, lines 15-19, OTTIERI references "a pleated or otherwise flexible bladder 76." Perhaps this is the portion of OTTIERI which is intended to be relied upon in the rejection, the rejection not explicitly identifying any particular portion.

First, the bladder 76 is, indeed, *flexible* --- not rigid. Second, the bladder 76 of OTTIERI has no disclosed abutting function according to the description provided by OTTIERI.

OTTIERI discloses a ski boot provided with a spring element 24, as described in column 4, lines 45-49. A stop 26 carried on the shoe section 10 engages the shin cuff section 16 to limit rearward lean of the skier. Nothing in OTTIERI, however, teaches or suggests that front lean of the boot is to be limited by an abutment. On the contrary, the spring element 24 suggests front lean should not be limited during use of the boot.

DODGE also wishes to provide a ski boot the front quarter of which is allowed to bend forward with respect to the vamp 5 and bears against a resilient member 29 so as to provide an elastic flexion of which the elasticity is adjustable. However, there is nothing taught or suggested by DODGE of an *abutment*.

D. Withdrawal of Rejection Under 35 USC §103(a), Based Upon DACHGRUBER, GRAY or MacQUAID or FILICE

Applicant respectfully requests that the rejection of claims 13 and 15 under 35 USC §103(a) based upon DACHGRUBER and GRAY, MacQUAID, or FILICE be reconsidered and withdrawn, at least for reasons given above with regard to the claims from which claims 13 and 15 depend.

**E. New Claims**

New claims 17-40 have been added, of which claims 19 and 30 are independent.

As mentioned above, claim 17 depends from claim 5 and specifies that the bending zone is narrower than the supports.

Dependent claim 18 specifies that the frame is fixed on a flexible and substantially inextensible membrane against movement along the membrane. For example, as seen in Figs. 3, 4A, and 4B, the rigid frame

Independent claim 19 is directed to an article for protecting a joint of a person's body from hyper-flexion, which includes, among other limitations, a frame having at least one bending zone between first and second ends of the frame, with first and second support areas on opposite sides of the bending zone; the bending zone having a flexibility adapted to allow bending of the frame in a bending direction within the bending plane through a range of bending; and at least one abutment within the bending zone to prevent bending of the frame beyond the range of bending during use of the article and to avoid hyper-flexion of the joint.

As mentioned above, in DACHGRUBER, the abutment between the end of the stiffener 24 and the recess of the tongue in which it is slidable is not within a bending zone of the stiffener.

Claim 20 depends from independent claim 19 and further specifies that the abutment comprises a notch extending substantially perpendicular to the bending plane, and that at the beginning of the range of bending the notch is open, and at the end of the range of bending the notch is closed. This feature is not taught or suggested by DACHGRUBER.

Claim 21 also depends from claim 19 and specifies that the abutment surfaces of the abutment are not engaged at the beginning of the range of bending, but they abut at the end of the range of bending.

Claim 22 depends from claim 19 and also specifies that the abutment comprises a notch, with a compressible insert being positioned within the notch, the insert being fully compressed at the end of the range of bending.

Claim 23 depends from claim 19 and specifies that the notch does not extend entirely through the frame. In DACHGRUBER, the apertures 100 extend through the stiffener.

Claim 24 depends from claim 19 and calls for the frame to be rigid.

Claim 25 depends from claim 19 and calls for the frame to be fixed against sliding movement along a base. By contrast, in DACHGRUBER, the stiffener slides relative to the tongue.

Claim 26 depends from claim 19 and calls for the bending zone to have a greater thickness than either of the support areas of the frame.

Claim 27 depends from claim 19 and additionally calls for a shock-absorbing element positioned for engagement with the frame, the shock-absorbing element being compressible during bending of the frame.

Claim 28 depends from claim 27 additionally calls for a pocket within which the shock-absorbing element is positioned.

Claim 29 depends from claim 19 and limits the protective article as being adapted for protecting the ankle of a wearer against hyper-flexion, with the range of bending having an end value no greater than between 30° to 45° from a beginning value.

Claims 30-40 are directed to a boot according to the invention.

Independent claim 30 describes the upper of the boot as having a high portion and a low portion, the high portion adapted to extend higher than an ankle of a wearer and the low portion adapted to extend along an instep of the wearer. More specifically, the frame is specified as including a tibia support, an instep support, and a bending zone between the tibia and instep supports. Still further, the bending zone is specified as having a flexibility adapted to allow bending of the tibia support in a bending direction relative to the instep support within a bending plane through a range of bending which comprises an angle of movement of no greater than 45°. Lastly, claim 30 calls for at least one abutment within the bending zone to prevent the bending of the frame beyond the range of bending while the boot is being used.

Dependent claims 31-40 relate to subject matter mentioned above in connection with claims 20-29.

**SUMMARY AND CONCLUSION**

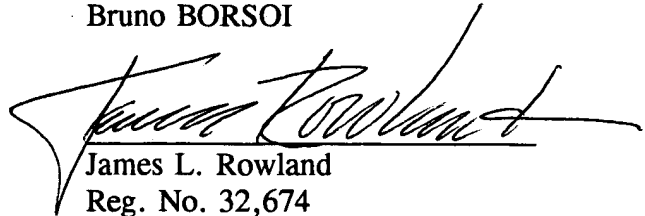
The grounds of rejection and objection advanced in the Office action have been addressed and are believed to be overcome. Reconsideration and allowance are respectfully requested in view of the amendment and remarks above.

A check is enclosed for payment of a claim fee. No additional fee is believed to be due at this time. However, the Commissioner is authorized to charge any fee required for acceptance of this reply as timely and complete to Deposit Account No. 19-0089.

Further, although no extension of time is believed to be necessary at this time, if it were to be found that an extension of time were necessary to render this reply timely and/or complete, Applicant requests an extension of time under 37 CFR §1.136(a) in the necessary increment(s) of month(s) to render this reply timely and/or complete and the Commissioner is authorized to charge any necessary extension of time fee under 37 CFR §1.17 to Deposit Account No. 19-0089.

Any comments or questions concerning this application can be directed to the undersigned at the telephone or fax number given below.

Respectfully submitted,  
Bruno BORSOI



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